

REMARKS

Claims 1-30 are pending in the present application.

At the outset, Applicants' undersigned Representative wishes to thank Examiner Elhilo for the helpful and courteous discussion on October 28, 2003. The content of this discussion is believed to be reflected in the remarks set forth herein. During this discussion the differences between the present invention and the art of record were discussed. Reconsideration is respectfully requested in view of the following comments.

The rejection of Claims 1, 2, and 18-20 under 35 U.S.C. §103(a) over Kawai et al is obviated by amendment.

Kawai et al disclose a hair treatment composition comprising (a) a guanidium salt, (b) an alkalizing agent other than the guanidium salt and, and (c) a silicone. In contrast, the originally claimed invention provides a semi-permanent hair dye composition comprising (a) a direct dye, (b) a hydrocarbon oil, and (c) a polyoxyalkylene-modified dimethyl polysiloxane. The Examiner concedes that the present invention is distinct from the disclosure of Kawai et al stating: "the claims differ from the reference by reciting ... a specific combination of dyeing ingredients" (paper number 5, page 3, lines 1-2). Moreover, not only do Kawai et al fail to disclose the specific combination; they also fail to provide any specific motivation to obtain a composition for application to hair meeting the limitations of the present claim.

Despite this conceded deficiency in the disclosure of Kawai et al, it appears the Examiner's position that the mere suggestion in this reference of components that may fall within the scope of the claims is sufficient to establish a *prima facie* case of obviousness.

Applicants disagree and further note none of the examples of Kawai et al contain more than a single component of the claimed invention. As such, this reference fails to disclose the present invention with sufficient specificity, much less provide the requisite expectation of the advantageous properties flowing from the claimed invention, which are clearly shown in the examples of the present specification (see pages 11-17).

Despite these clear and conceded differences, Applicants do not wish to belabor the point, but in no way acquiesce to the propriety of the rejection over Kawai et al. As such, Claim 1 has been amended herein to (a) limit the "direct dye" to an "acid dye" and (b) specify that the "pH of the hair dye composition is within a range of 2 to 5 when it is diluted to 1/10-strength with water." Applicants submit that these limitations are clearly distinct from the disclosure of Kawai et al. Therefore, the presently claimed invention provides a semi-permanent hair dye composition comprising (a) an acid dye, (b) a hydrocarbon oil, and (c) a polyoxyalkylene-modified dimethyl polysiloxane, wherein the pH of the hair dye composition is within a range of 2 to 5 when it is diluted to 1/10-strength with water (see Claim 1).

In general, in the field of hair color (dye) a direct dye may include an acid dye, a basic dye, and a nitro dye. In the presently claimed invention an acid dye is employed and exemplified on pages 11-17. The behavior of acid dyes during the dyeing process of hair is distinct from that of basic dyes or nitro dyes. Acid dyes are relatively difficult to penetrate the hair; however, once they have deposited on the hair, the acid dyes are not easy to remove from hair. On the other hand, basic dyes and nitro dyes penetrate hair relatively easily and may be readily removed by even shampooing.

In contrast to the present invention, Kawai et al employ an oxidation dye. An oxidation dye is colorless, but upon hair penetration it reacts with hydrogen peroxide and

undergoes oxidation polymerization resulting in the development of color. What is typically called a permanent hair color belongs mostly to this type of dyes. Some permanent hair colors use any of nitro dyes or basic dyes as a supplementary dye. The direct dye of Kawai et al is of the supplementary dye type. Therefore, on the basis of the differing dye types alone, Kawai et al cannot render the present invention obvious.

Further, another important distinction between the present invention and the disclosure of Kawai et al lies in the pH of the hair composition. Acid dyes are difficult to deposit on the hair in any condition other than an acidic condition. In contrast, the aforementioned permanent hair colors are used under alkaline conditions by use of ammonia in order to cause the polymerization of the oxidation dye by using hydrogen oxide and decomposition of melanin (bleaching) to occur easily. As such, the pH of the compositions disclosed by Kawai et al is in the range of 8-12. This pH differs significantly from the present invention in which the pH of the hair dye composition is within a range of 2 to 5 when it is diluted to 1/10-strength with water. Accordingly, for this additional reason, the present invention is not obvious in view of the disclosure of Kawai et al.

Therefore, Applicants request withdrawal of this ground of rejection.

The objection of Claims 2 is obviated by appropriate amendment.

Applicants wish to thank Examiner Elhilo for the helpful suggestion to address this ground of objection, which has been adopted in the amendment hereinabove.

Withdrawal of this ground of objection is requested.

Applicants submit that the present application is now in condition for allowance.

Early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Norman F. Oblon  
Attorney of Record  
Registration No. 24,618

Vincent K. Shier, Ph.D.  
Registration No. 50,552

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413-2220  
(OSMMN 08/03)  
NFO:VKS